BUSINESS ASSOCIATE PROTECTED HEALTH INFORMATION DISCLOSURE AGREEMENT

This Business Associate Protected Health Information Disclosure Agreement (“Agreement”) is entered into by and between DME Consulting Group, Inc. "Company" and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, “Business Associate”, an independent consultant, on this day, \_\_\_\_\_\_\_\_\_\_\_\_ (Execution Date).

RECITALS

WHEREAS, the parties have executed an agreement(s) whereby Business Associate provides services to Company, and Business Associate receives, has access to or creates Protected Health Information in order to provide those services (“Services Agreement(s)”);

WHEREAS, DMECG is a Business Associate to Covered Entities, subject to the Administrative Simplification requirements of the Health Insurance Portability and Accountability Act of 1996, and regulations promulgated thereunder, including the Standards for Privacy of Individually Identifiable Health Information at 45 Code of Federal Code of Federal Regulations Parts 160 and 164 (“Privacy Regulations”) and the Security Standards for Electronic Protected Health Information (“Security Regulations”) at 45 Code of Federal Code of Federal Regulations Parts 160 and 164 (together, the “Privacy and Security Regulations”);

WHEREAS, as a Business Associate, is subject to certain provisions of the Health Insurance Portability and Accountability Act of 1996, and regulations promulgated thereunder, as required by the HITECT Act, pursuant to Title XIII3 of the American Recovery and Reinvestment Act of 2009;

WHEREAS, the Privacy and Security Regulations require Company to enter into a contract with Business Associate in order to mandate certain protections for the privacy and security of Protected Health Information, and those Regulations prohibit the disclosure to or use of Protected Health Information by Business Associate if such a contract is not in place;

NOW, THEREFORE, in consideration of the foregoing, and for other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the parties agree as follows:

Definitions

Catch-all definition:

The following terms used in this Agreement shall have the same meaning as those terms in the HIPAA Rules: Breach, Data Aggregation, Designated Record Set, Disclosure, Health Care Operations, Individual, Minimum Necessary, Notice of Privacy Practices, Protected Health Information, Required By Law, Secretary, Security Incident, Subcontractor, Unsecured Protected Health Information, and Use.

Specific definitions:

1. Business Associate.  “Business Associate” shall generally have the same meaning as the term “business associate” at 45 CFR 160.103, and in reference to the party to this agreement, shall mean [Insert Name of Business Associate].
2. HIPAA Rules.  “HIPAA Rules” shall mean the Privacy, Security, Breach Notification, and Enforcement Rules at 45 CFR Part 160 and Part 164.
3. “Disclose” and “Disclosure” Information, the release, transfer, provision of access to, or

divulging in any other manner of Protected Health Information outside

1. “HHS” means the Federal Department of Health and Human Services.
2. “HITECH Act” means the Health Information Technology for Economic and Clinical Health (HITECH) Act, codified at 42 U.S.C. §§ 17921-17954.
3. “Protected Health Information” has the same meaning as the term “protected health information” in 45 C.F.R. § 164.501, limited to the information created or received by Business Associate from or on behalf of Company. Protected Health Information includes information that (i) relates to the past, present or future physical or mental health or condition of an Individual; the provision of health care to an Individual, or the past, present or future payment for the provision of health care to an Individual; (ii) identifies the Individual (or for which there is a reasonable basis for believing that the information can be used to identify the Individual); and (iii) is received by Business Associate from or on behalf of Company, or is created by Business Associate, or is made accessible to Business Associate by Company. “Protected Health Information” includes Electronic Protected Health Information.
4. “Required By Law” means a mandate contained in law that compels an entity to make a Use or Disclosure of Protected Health Information and that is enforceable in a court of law. Required by law includes, but is not limited to, court orders and court-ordered warrants; subpoenas or summons issued by a court, grand jury, a governmental or tribal inspector general, or any administrative body authorized to require the production of information; a civil or an authorized investigative demand; Medicare conditions of participation with respect to health care providers participating in the program; and statutes or regulations that require the production of information, including statutes or regulations that require such information if payment is sought under a government program providing benefits.
5. Services” has the same meaning as in the Services “Agreement(s).
6. “Use” or “Uses” mean, with respect to Protected Health Information, the sharing, employment, application, utilization, examination or analysis of such Information within Business Associate’s internal operations.
7. Terms used, but not otherwise defined, in this Agreement shall have the same meaning as those terms in the Privacy Regulations.

Obligations and Activities of Business Associate

Business Associate agrees to:

(a) Not use or disclose protected health information other than as permitted or required by the Agreement or as required by law;

(b) Use appropriate safeguards and comply with Subpart C of 45 CFR Part 164 with respect to electronic protected health information, to prevent use or disclosure of protected health information other than as provided for by the Agreement. Specifically, as to Electronic Protected Health Information, Business Associate warrants that it shall implement administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of Electronic Protected Health Information including but not limited to:

1. Employ biometric password protection on all mobile devices used to access PHI;
2. Use strong passwords on all devices used to access PHI. The term “strong” refers to passwords that include special characters, more than eight digits in length and not easily derived by anyone other than the password creator;
3. Prevent any unauthorized viewing of PHI data by always logging out of system;
4. Do not print, photograph or copy any PHI from system to be used outside of encrypted platform;
5. Utilize full disk encryption on all systems that access PHI data;
6. Utilize anti-virus, malware and ransomware protection on all systems that access PHI;
7. Do not download or utilized links from unknown sites or email senders;

(c) Report to Company any use or disclosure of protected health information not provided for by the Agreement of which it becomes aware, including breaches of unsecured protected health information as required at 45 CFR 164.410, and any security incident of which it becomes aware;

(d) In accordance with 45 CFR 164.502(e)(1)(ii) and 164.308(b)(2), if applicable, ensure that any subcontractors that create, receive, maintain, or transmit protected health information on behalf of the business associate agree to the same restrictions, conditions, and requirements that apply to the business associate with respect to such information;

(f) Make any amendment(s) to protected health information in a designated record set as directed or agreed to by the Company pursuant to 45 CFR 164.526, or take other measures as necessary to satisfy Company’s obligations under 45 CFR 164.526;

(h)  To the extent the business associate is to carry out one or more of Company’s obligation(s) under Subpart E of 45 CFR Part 164, comply with the requirements of Subpart E that apply to the Company in the performance of such obligation(s); and

(i) Make its internal practices, books, and records available to the Secretary for purposes of determining compliance with the HIPAA Rules.

Permitted Uses and Disclosures by Business Associate

(a) Business associate may only use or disclose protected health information related to work as a representative of DMECG. Electronic copies of PHI through downloading, screen recording or taking still photos for access outside of DMECG platform is prohibited unless approved in writing by Privacy Officer.

(b) Business associate may use or disclose protected health information only as required by law.

Term and Termination

(a) Term. The Term of this Agreement shall be effective as of contract execution date and shall terminate two years from last date of Business Associate employment, or from the date Company terminates contract for cause as authorized in paragraph (b) of this Section.

(b) Termination for Cause. Business associate authorizes termination of this Agreement by Company, if Company determines business associate has violated a material term of the Agreement.

(c) Obligations of Business Associate Upon Termination.

* + 1. Upon termination of this Agreement for any reason, business associate shall return or destroy all protected health information received from Company, or created, maintained, or received by business associate on behalf of Company, that the business associate still maintains in any form.  Business associate shall retain no copies of the protected health information in any form.
    2. Upon termination of this Agreement for any reason, business associate, with respect to protected health information received from Company, or created, maintained, or received by business associate on behalf of Company, shall:
    3. Retain only that protected health information which is necessary for business associate to continue its proper management and administration or to carry out its legal responsibilities;
    4. Return to Company the remaining protected health information that the business associate still maintains in any form;
    5. Continue to use appropriate safeguards and comply with Subpart C of 45 CFR Part 164 with respect to electronic protected health information to prevent use or disclosure of the protected health information, other than as provided for in this Section, for as long as business associate retains the protected health information;

(d) Survival.  The obligations of business associate under this Section shall survive the termination of this Agreement.

Miscellaneous

1. Use of Subcontractors and Agents. Business Associate shall require each of its agents and subcontractors that receive Protected Health Information from Business Associate, or create Protected Health Information for Business Associate, on behalf of Company, to execute a written agreement obligating the agent or subcontractor to comply with all the terms of this Agreement.
2. Regulatory References. A reference in this Agreement to a section in the Privacy and Security Regulations means the section as in effect or as amended.
3. Interpretation. Any ambiguity in this Agreement shall be resolved in favor of a meaning that permits Company to comply with the Privacy and Security Regulations.
4. Amendment. The parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for Company to comply with the requirements of the Privacy and Security Regulations.

EXECUTION

Subject to the execution of the State Contract by Company and the State, this Agreement shall become effective as of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

In witness thereof, the parties have executed this Agreement:

| Business Associate |  | DME Consulting Group, Inc. |
| --- | --- | --- |
|  |  |  |
| Signature |  | Signature |
|  |  |  |
| Print Name |  | Print Name |
|  |  |  |
| Title |  | Title |
|  |  |  |
| Date |  | Date |